

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0369

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 60** - 01/21/2005

Introduced by: The Committee on Judiciary at the request of the South Dakota Commission
on Child Support

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to child support.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If the child receives social security or veteran's dependent benefits as a result of the obligor's
6 disability, or social security retirement benefits from the obligor, the obligor is entitled to a
7 credit to the amount of the monthly support obligation.

8 Section 2. That § 25-7-6.7 be amended to read as follows:

9 25-7-6.7. Deductions from monthly gross income shall be allowed as follows:

10 (1) Income taxes ~~withheld figured on the basis of two dependent exemptions for a single~~
11 ~~taxpayer paid monthly rather than actual amount withheld~~ payable based on the
12 applicable tax rate for a single taxpayer with one withholding allowance and a
13 monthly payroll period rather than the actual tax rate;

14 (2) ~~Estimated income taxes payable, prorated monthly~~ Social security and medicare taxes
15 based on the applicable tax rate for an employee or a self-employed taxpayer;



(3) ~~FICA taxes withheld from wages or salary;~~

~~(4) Retirement fund amounts withheld or paid directly to an IRS qualified retirement plan, in a reasonable amount~~ Contributions to an IRS qualified retirement plan not exceeding ten percent of gross income;

~~(5)~~(4) Actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed;

~~(6)~~(5) Payments made on other support and maintenance orders.

Section 3. That § 25-7-6.14 be amended to read as follows:

25-7-6.14. As used in this section, basic visitation means a parenting plan whereby one parent has physical custody and the other parent has visitation with the child of the parties. In a basic visitation situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order an abatement of not less than thirty-eight percent nor more than sixty-six percent of the child support if:

(1) A child spends ten or more days in a month with the obligor; and

(2) The days of visitation and the abatement amount are specified in the court order.

The court shall allow the abatement to the obligor in the month in which the visitation is exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation. It shall be presumed that the visitation is exercised. If the visitation exercised substantially deviates from the visitation ordered, either party may file a petition for modification without showing any other change in circumstances.

As used in this section, shared responsibility means a parenting plan whereby each parent provides a suitable home for the child of the parties, the court order allows the child to spend at least one hundred twenty days in a calendar year in each home, and the parents have agreed in writing to share the duties, responsibilities, and expenses of parenting, including expenses

1 for the child's education, recreation, and entertainment activities. In a shared responsibility
2 situation, unless the parties otherwise agree and the agreement is approved by the court, the
3 court may, if deemed appropriate under the circumstances, order a shared responsibility cross
4 credit. The cross credit shall be calculated by multiplying the combined child support obligation
5 using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support
6 obligation. The shared custody child support obligation shall be apportioned to each parent
7 according to his or her net income. A child support obligation is computed for each parent by
8 multiplying that parent's portion of the shared custody child support obligation by the percentage
9 of time the child spends with the other parent. The respective child support obligations are
10 offset, with the parent owing more child support paying the difference between the two
11 amounts. It shall be presumed that the shared responsibility parenting plan is exercised. If the
12 parenting plan exercised substantially deviates from the parenting plan ordered, either party may
13 file a petition for modification without showing any other change in circumstances.

14 The court shall consider each case individually before granting either the basic visitation or
15 shared responsibility adjustment to insure that the adjustment does not place an undue hardship
16 on the custodial parent or have a substantial negative effect on the child's standard of living.

17 Section 4. That § 25-7-6.13 be amended to read as follows:

18 25-7-6.13. All orders for support entered and in effect prior to July 1, ~~2004~~ 2005, may be
19 modified in accordance with this chapter without requiring a showing of a change in
20 circumstances from the entry of the order.

21 Section 5. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 If a parent is employed full-time at a rate of pay that equals or exceeds the state's minimum
24 wage, it shall be presumed that a parent's second job income is not to be considered in

1 establishing a support obligation. This presumption may be rebutted by evidence that the income
2 source was available to pay expenses related to the child when the family was intact or if the
3 family had formed, by evidence that exclusion of the income would result in a financial hardship
4 upon the other parent, or that exclusion of the second job income will have a substantial
5 negative effect upon the child's standard of living.

6 Section 6. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If the parents have two or more children between them and each parent has primary physical
9 custody of at least one child, the child support obligation shall be determined by computing the
10 amount of each parent's respective support obligation for the children in the other parent's
11 physical custody, and the support obligations shall be offset in determining a monthly support
12 obligation. If one or more of the children are receiving assistance from the department as
13 provided in § 28-7A-7, and in lieu of the offset, each parent shall be obligated to pay the
14 respective support obligation amount to the other parent.

15 Section 7. That § 25-7A-6 be amended to read as follows:

16 25-7A-6. If a parent served with a notice of support debt under § 25-7A-5 makes a timely
17 request for a hearing, the secretary of social services shall file the notice of support debt, proof
18 of service thereof, and response thereto in the office of the clerk of the circuit court in the county
19 of residence of that parent. The matter shall be set for hearing before a referee who is a member
20 in good standing of the State Bar Association and is appointed by the court, pursuant to statute,
21 and after due notice to all parties by first class mail. The referee shall make a report to the court,
22 recommending the amount of the debt due to the state, if any, and the monthly support
23 obligation of the parent and the arrearage debt due to the obligee or another state who has
24 applied for support enforcement services, or for health insurance coverage or genetic testing

1 costs.

2 The referee shall file the report with the court and cause copies thereof to be served by
3 mailing to the parties and the secretary. Any party shall have ten days from the date of service
4 of the report in which to file objections to the report. If a party files an objection, the other party
5 shall have an additional five days form the date of service of the objections to file additional
6 objections. If no objection is filed, the circuit court may thereafter, and without further notice,
7 enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report,
8 the hearing to be solely on the record established before the referee. The circuit court may
9 thereafter adopt the referee's report, or may modify it, or may reject and remand it with
10 instructions or for further hearing. The secretary shall serve the parent the court's order by
11 certified mail, return receipt requested, at the parent's last known address, and shall file proof
12 of service.

13 If the circuit court's order modifies the referee's report and no hearing was held before the
14 court before entry of its order, any party has ten days from the date of service of the order in
15 which to file an objection to that modification. If an objection is filed, the circuit court shall fix
16 a date for hearing on the objection and after the hearing shall enter its order. The secretary shall
17 serve the order by certified mail, return receipt requested, at the parent's last known address, and
18 shall file proof of service.

19 Section 8. That § 25-7A-22 be amended to read as follows:

20 25-7A-22. If the support order was entered in this state and this state maintains continuing
21 exclusive jurisdiction over the support order in accordance with chapter 25-9B, or if the support
22 order was registered in this state and the requirements of § 25-9B-611 or 25-9B-613 are
23 satisfied, an obligor, an obligee, or the assignee may file a petition, on forms prescribed by the
24 department, to increase or decrease child support. For any support order entered or modified

1 after July 1, 1997:

2 (1) The order may be modified upon showing a substantial change in circumstances if
3 the petition is filed within three years of the date of the order; or

4 (2) The order may be modified without showing any change in circumstances if the
5 petition is filed after three years of the date of the order.

6 If a petition is filed, the secretary of social services shall file the petition in the office of the
7 clerk of the circuit court where the original order for support is filed. Any response shall also
8 be provided to the petitioning party. The matter shall be set for hearing before a referee who is
9 a member in good standing of the State Bar Association and is appointed by the court, pursuant
10 to statute, and after due notice to all parties by first class mail. The referee shall make a report
11 to the court, recommending the amount of the monthly support obligation of the parent or for
12 health insurance coverage.

13 The referee shall file the report with the court and cause copies thereof to be served by
14 mailing to the parties and the secretary. Any party shall have ten days from the date of service
15 of the report in which to file objections to the report. If a party files an objection, the other party
16 shall have an additional five days from the date of service of the objections to file additional
17 objections. If no objection is filed, the circuit court may thereafter, and without further notice,
18 enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report,
19 the hearing to be solely on the record established before the referee. The circuit court may
20 thereafter adopt the referee's report, or may modify it, or may reject and remand it with
21 instructions or for further hearing. The secretary shall serve the parent the court's order by
22 certified mail, return receipt requested, at the parent's last known address, and shall file proof
23 of service.

24 If the circuit court's order modifies the referee's report and no hearing was held before the

1 circuit court before entry of its order, any party has ten days from the date of service of the order
2 in which to file an objection to that modification. If an objection is filed, the circuit court shall
3 fix a date for hearing on the objection and after the hearing shall enter its order. The secretary
4 shall serve the order by certified mail, return receipt requested, at the parent's last known
5 address, and shall file proof of service.

6 Section 9. That chapter 25-7A be amended by adding thereto a NEW SECTION to read as
7 follows:

8 In any order establishment case, the obligee is limited to a prior-period support obligation
9 or arrearage not exceeding three years from either the date of application with any Title IV-D
10 agency, the date of filing with a court of competent jurisdiction, or the date of a written demand
11 served personally or by registered or certified mail, return receipt requested upon the father at
12 his last known address, whichever occurs earlier.

13 Section 10. That § 25-7-6.10 be amended to read as follows:

14 25-7-6.10. Deviation from the schedule in § 25-7-6.2 shall be considered if raised by either
15 party and made only upon the entry of specific findings based upon any of the following factors:

- 16 (1) The income of a subsequent spouse or contribution of a third party to the income or
17 expenses of that parent but only if the application of the schedule works a financial
18 hardship on either parent;
- 19 (2) Any financial condition of either parent which would make application of the
20 schedule inequitable. If the total amount of the child support obligation, including
21 any adjustments for health insurance and child care costs, exceeds fifty percent of the
22 obligor's monthly net income, it shall be presumed that the amount of the obligation
23 imposes a financial hardship on the obligor. This presumption may be rebutted based
24 upon other factors set forth in this section;

- 1 (3) ~~The federal income tax consequences arising from claiming the child as a dependent;~~
2 ~~—(4)—~~ Any necessary education or health care special needs of the child;
3 ~~—(5)—~~ For agreements entered into prior to July 1, 1986, if it is established by clear and
4 convincing evidence, that debts or property were exchanged for child support and it
5 appears equitable to continue such arrangement;
6 ~~(6)~~(4) The effect of agreements between the parents regarding extra forms of support for the
7 direct benefit of the child;
8 ~~(7)~~(5) The obligation of either parent to provide for subsequent natural children or
9 stepchildren. However, an existing support order may not be modified solely for this
10 reason; or
11 ~~(8)~~(6) The voluntary act of either parent which reduces that parent's income.

12 Section 11. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If the parents of a child have agreed to a change in the physical custody of the child without
15 the court's approval, the parent who relinquished physical custody may be ordered to pay child
16 support to the parent who gained physical custody of the child even though the custody order
17 has not been modified to reflect the change in custody.

18 Section 12. That chapter 25-7 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 The department shall create and distribute a standardized form to allow a parent, guardian,
21 or other custodian to request reimbursement of any medical or health care costs from the
22 responsible parent. A parent, guardian, or custodian shall also be entitled to use the small claims
23 procedure of chapter 15-39 as a means to collect unreimbursed medical or health care costs from
24 the responsible parent.

1 Section 13. That § 25-8-5 be amended to read as follows:

2 25-8-5. The mother may recover ~~from the father a reasonable share of the necessary support~~
3 ~~of a child born out of wedlock.~~

4 ~~— In the absence of a previous demand in writing served personally or by registered or certified~~
5 ~~letter addressed to the father at his last known residence, not more than six years' support~~
6 ~~furnished before bringing an action may be recovered from the father~~ support for a period of
7 three years from the date of application with any Title IV-D agency, the date of filing with a
8 court of competent jurisdiction, or the date of a written demand served personally or by
9 registered or certified mail, return receipt requested, upon the father at his last known address,
10 whichever occurs earlier.

11 Section 14. That chapter 15-39 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Notwithstanding any other provision of law, a parent, guardian, or custodian is entitled to
14 use the procedures provided in this chapter to collect unreimbursed medical or health care costs
15 incurred on behalf of a child from the other responsible parent.